

# **THE SEX OFFENDER MANAGEMENT AND TREATMENT ACT: THE FIRST YEAR**



**A REPORT ON THE 2007 LAW THAT ESTABLISHED CIVIL COMMITMENT AND MANAGEMENT FOR SEX OFFENDERS, THE DEPARTMENT OF CORRECTIONAL SERVICES' IMPROVED SEX OFFENDER TREATMENT PROGRAM AND THE OFFICE OF SEX OFFENDER MANAGEMENT**

**THE SEX OFFENDER MANAGEMENT AND TREATMENT ACT:**  
**THE FIRST YEAR**

**INTRODUCTION.....1**

**HOW CIVIL MANAGEMENT WORKS.....3**

**The Stages in the Civil Management Process.....4**

**The Difference Between SIST and Civil Confinement.....6**

**A SNAP SHOT OF CIVIL MANAGEMENT AFTER ONE YEAR.....7**

**IMPACT – IS CIVIL MANAGEMENT MAKING NEW YORKERS SAFER?.....11**

**THE DEPARTMENT OF CORRECTIONAL SERVICES’ NEW  
TREATMENT PROGRAM.....12**

**THE OFFICE OF SEX OFFENDER MANAGEMENT.....13**

**CONCLUSION.....14**

## **INTRODUCTION**

On April 13, 2007, the Sex Offender Management and Treatment Act took effect.

This law (often called “SOMTA”) did three main things:

1. Established “Civil Management,” a new legal process to civilly confine and/or closely supervise sex offenders who are about to be released from prison or complete their time on parole, but who remain a clear threat to commit additional sex crimes.
2. Required the Department of Correctional Services to provide improved treatment to incarcerated sex offenders.
3. Created the new Office of Sex Offender Management within the Division of Criminal Justice Services.

SOMTA has now been in effect for one year and great strides have been made towards fully implementing its objectives. The goal of establishing a system to process, evaluate and litigate Civil Management cases has been accomplished. Cases are being reviewed by the Office of Mental Health, the Attorney General is filing petitions, trials are being held, and 36 dangerous offenders have been civilly confined. The primary government agencies involved - the Department of Correctional Services, the Office of Mental Health, the Division of Parole, and the Office of the Attorney General - have created units to handle these cases and provided the resources to make this program a success. For instance, the Attorney General’s office established and staffed a new State-wide bureau to litigate these cases, and the Office of Mental Health has hired staff and built new hospital space to house offenders.

Significant progress has been made in other areas as well. The Department of Correctional Services is creating a state-of-the-art treatment regime for sex offenders in prison. And, the Office of Sex Offender Management (OSOM), which has been deeply involved in getting the Civil Management system up and running, has also been pursuing a number of initiatives.

#### **ACCOMPLISHMENTS IN ONE YEAR**

- The Civil Management system is now operational across New York State.
- Cases are being reviewed, petitions filed and trials held.
- 36 dangerous sex offenders have been civilly confined so far and this number will climb over the next twelve months.

This report gives an overview of the implementation of the Sex Offender Management and Treatment Act. It is divided into four parts: an explanation of how Civil Management works; a snap shot of the Civil Management system after one year; an explanation of the Department of Correctional Services' new treatment program; and, a quick overview of the initiatives that the Office of Sex Offender Management is working on to support Civil Management, as well as to ensure more effective management of sex offenders across the State.

## HOW CIVIL MANAGEMENT WORKS

There are three essential elements to understanding how Civil Management works in New York State. First, Civil Management was never intended to apply to every sex offender. In fact, the legislation was designed to target only those offenders who suffer from a mental abnormality and pose the greatest risk of committing a new crime.

Currently, nearly 10% of sex offenders who are being released from prison or coming off parole (and therefore can be considered for Civil Management) are ultimately referred for Civil Management.

Second, New York's system is unique in that it offers not one, but two options for dealing with sex offenders. The court has the option of confining dangerous offenders to a separate psychiatric hospital (called a "secure treatment facility"), *or* placing an offender on "Strict and Intensive Supervision and Treatment" (SIST), which allows for the Division of Parole to very closely supervise those offenders in the community while ensuring that they receive the treatment and support they need.

Third, Civil Management enhances public safety by filling a void. Many of the sex offenders placed on Civil Management would otherwise be released from prison after having served their full sentence. These offenders would not be on parole. Other offenders placed on Civil Management may have been on parole, but their time on parole has expired. Therefore, without Civil Management these individuals would be released to the community without any kind of supervision. Nor would they receive treatment. Civil Management enhances public safety by allowing the State to go to court and either place these offenders on Strict and Intensive Supervision and Treatment, or confine the most dangerous individuals.

### **KEY FACTS**

- Civil Management applies to approximately 10% of all sex offenders eligible for review.
- New York has two options: Civil confinement or Strict and Intensive Supervision and Treatment (SIST).
- Enhances public safety: Before Civil Management, most of these offenders would have been released into the community with no supervision or treatment. Civil Management allows the State to step in and civilly confine the most dangerous offenders, and to place other offenders under SIST.

### **The Stages in the Civil Management Process**

The process usually begins when a sex offender is about to be released from prison, or his or her time on parole is about to expire (some offenders may be in the custody of the Office of Mental Retardation and Developmental Disabilities or the Office of Mental Health). Every case is reviewed by the Office of Mental Health, which carries out a multi-stage appraisal and assessment. As would be expected, the majority of cases are weeded out. Those offenders who meet the initial threshold for possible civil action are evaluated by a psychologist or psychiatrist. If it is determined that the offender suffers from a “mental abnormality,” the case is referred to the Attorney General for possible litigation.

If the Attorney General concludes that the case is appropriate for Civil Management, he can file a petition with the court. The Attorney General carries the burden of proving, “by clear and convincing evidence” (the most stringent standard in a civil court proceeding) that the offender suffers from a mental abnormality. The offender (also called a “respondent”) is entitled to a jury trial before he or she can be involuntarily

confined or subjected to intensive supervision. With anything less than a unanimous verdict, the offender must be released.

If the court finds that the offender warrants Civil Management, but can safely be supervised in the community, he or she will be placed under the responsibility of the Division of Parole. The offender will be allowed to live in the community as long as he or she complies with all the conditions set by Parole, does not break the law, and receives the treatment he or she needs. This is called “Strict and Intensive Supervision and Treatment,” or “SIST.” Finally, if the court finds that the offender is a “dangerous sex offender requiring confinement” he or she can be civilly confined in a secure treatment facility run by the Office of Mental Health.

#### **STAGES IN THE CIVIL MANAGEMENT PROCESS:**

- 1. Initial referral:** The case is referred to the Office of Mental Health (usually from the Department of Correctional Services or the Division of Parole).
- 2. Evaluation:** The Office of Mental Health evaluates each case, and refers to the Attorney General the relatively few cases that fit the criteria for civil management.
- 3. Litigation:** The Attorney General can file a petition in court. There are many safeguards to protect the offender’s rights. For instance, if the offender cannot afford an attorney, one will be appointed at public expense.
- 4. Supervision, treatment and review:** If an offender is placed on Strict and Intensive Supervision and Treatment, he or she is closely monitored by specialized parole officers and he or she must receive sex offender treatment. If the court orders confinement, he or she will be sent to a secure treatment facility. All offenders continue to be represented by an attorney, and every case is periodically reviewed by the court.

While Civil Management is a complex process, these safeguards are necessary to ensure that the offender’s legal rights are respected, and that decisions to civilly manage

individuals withstand scrutiny in court. A flow chart has been attached at the end of this report to give a more detailed description of each stage of this process.

### **The Difference Between SIST and Civil Confinement**

As mentioned above, New York provides two options for sex offenders with mental abnormalities: Strict and Intensive Supervision and Treatment (SIST) or civil confinement. SIST is intended for those sex offenders who need close supervision and monitoring, but who can safely live in the community. Before an offender is placed on SIST, the Division of Parole will investigate factors such as his background and where he intends to live. The judge hearing the case must agree to the offender being placed on SIST. The judge also continues to monitor the case once the offender is placed on SIST status.

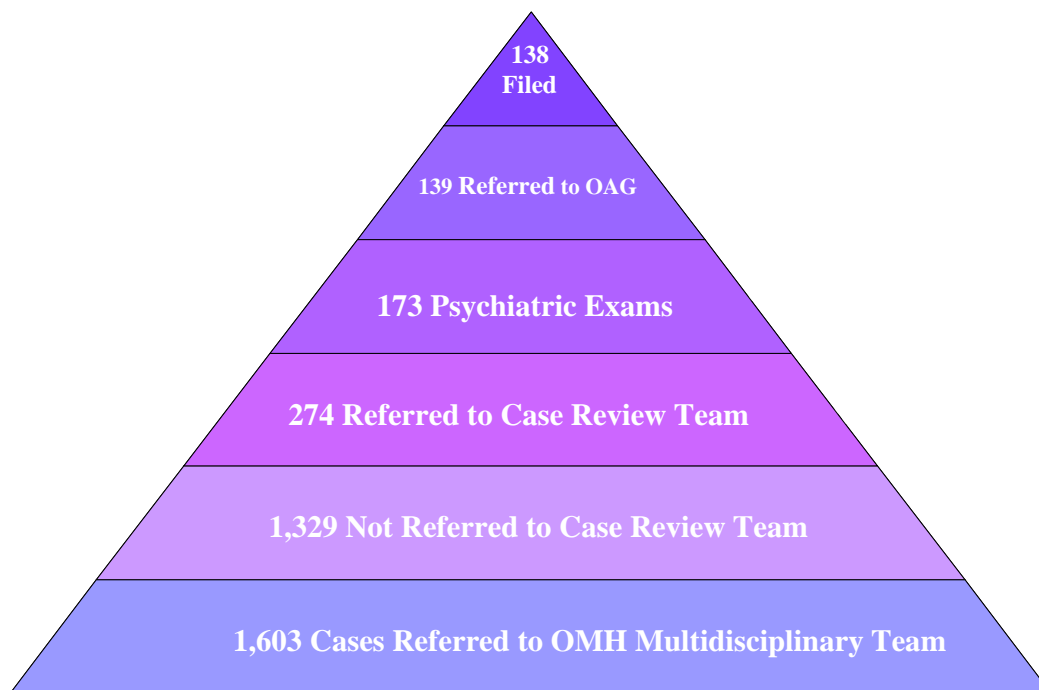
All sex offenders on SIST are supervised by specially trained parole officers with a greatly reduced case load of 10:1. In addition, offenders are required to have six face-to-face supervision contacts and six collateral contacts each month. This allows the Officer to closely monitor the offender. Offenders are also required to abide by a set of conditions that relate to known risk factors and prior behavior. For example, these conditions may mandate that the offender cannot have contact with minors, must abide by a curfew, and cannot use a computer. Typically individuals on SIST are monitored using GPS and must take polygraph examinations. Offenders are also required to receive sex offender treatment and substance abuse treatment if appropriate. If an offender violates any of these conditions the parole officer is authorized to take the person into custody. At that point, the Attorney General's office can return to court and seek modification of the SIST conditions, or if appropriate, that the offender be confined.



Confinement, unlike SIST, is intended for the most dangerous offenders with mental abnormalities, those who cannot safely live in the community. For both the public's safety, and the treatment needs of the offender, these individuals must be confined in a secure treatment facility where they can receive treatment. There are two such facilities in the State: Central New York Psychiatric Center in Marcy, New York, and St. Lawrence Psychiatric Center near Ogdensburg, New York.

### **A SNAP SHOT OF CIVIL MANAGEMENT AFTER ONE YEAR**

Civil Management, as the Legislature anticipated, applies only to a small percentage of sex offenders. As of April 13, 2008, there have been 1,603 new cases reviewed by the Office of Mental Health. Of these, 1,329 were screened out at the first stage by the Multi-disciplinary Review Team and 274 were passed onto the Case Review Team stage. Of these, 173 individuals received a psychiatric examination. After the psychiatric examinations, 139 cases were ultimately referred to the Attorney General's office. This is 9% of the total number of cases reviewed. The pyramid on the following page depicts the number of new cases evaluated during the last twelve months.



In addition to the new cases which concerned individuals who were about to be released from prison or whose parole term was coming to an end, there were an additional 123 cases that were reviewed. These 123 cases, which are often called “Harkavy” cases, concerned sex offenders who were previously civilly confined during the administration of Governor Pataki using the existing Mental Hygiene Law (so called “Article 9”). This effort was challenged in court, and in State of N.Y. ex rel. Harkavy v. Consilvio, 7 N.Y.3d 607 (2006) (“Harkavy I”), the New York Court of Appeals held that Article 9 had been improperly used to confine these offenders. On March 14, 2007, the Sex Offender Management and Treatment Act was signed, establishing the Civil Management system (also called “Article 10”).

Subsequently, on June 5, 2007, the Court of Appeals handed down State of N.Y. ex rel. Harkavy v. Consilvio, 8 N.Y.3d 645 (2007) (“Harkavy II”), in which it held that

all sex offenders still being held in an Office of Mental Health facility pursuant to Governor Pataki's initiative had to be re-evaluated under the new procedures. As a result, 123 individuals were re-evaluated by the Office of Mental Health. Of these, 60 met the criteria for Civil Management under Article 10 and were referred to the Attorney General's office for possible litigation. The last of these cases was referred in December of 2007. Of the remaining individuals, 8 suffered from a traditional mental illness and were committed on that basis. The remaining 55 have been, or soon will be, released.

#### **TOTAL NUMBERS - "NEW" AND "HARKAVY" CASES**

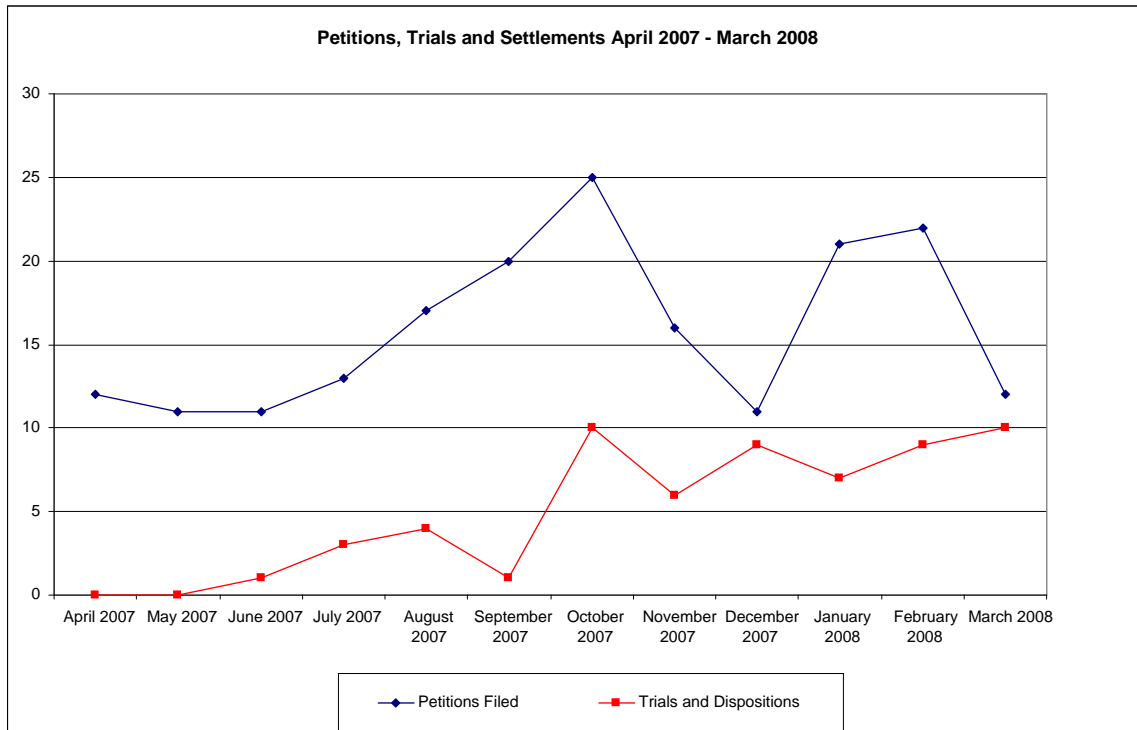
- 196 Civil Management petitions have been filed by the Attorney General's office.
- 36 offenders have been confined (3 as a result of trial and 33 as a result of a negotiated disposition).
- 21 have been placed on Strict and Intensive Supervision and Treatment (SIST).
- Of the individuals placed on SIST, 9 have been violated by the Division of Parole.
- 12 trials have been held. In 7 of these the jury or judge found that the offender warranted Civil Management, while in 4 cases the court found that the offender did not. One recent case resulted in a hung jury and will be re-tried.

Therefore, including both "new" Civil Management cases, and the "Harkavy" cases, a total of 199 cases were referred to the Attorney General's office for possible litigation. The Attorney General filed petitions in all but 3 of these cases. While most of these cases are still being litigated, 12 trials have been held so far. In 7 of those trials, the jury or judge found that the individual warranted Civil Management. In 4 cases the

jury found that the individual did not warrant Civil Management, and 1 case resulted in a hung jury and will be re-tried.

In addition to these trials, there have been a number of negotiated dispositions (essentially plea bargains). In 33 cases the sex offender, represented by an attorney, consented to being confined. In another 20 cases, the Attorney General, the sex offender’s attorney, and the judge all agreed that SIST would be appropriate.

As the chart below makes clear, for the first few months after Civil Management was instituted there were no, or few, trials or negotiated dispositions. However the number of trials and dispositions has steadily climbed and it is anticipated that this trend will continue over the next twelve months.



## **IMPACT - IS CIVIL MANAGEMENT MAKING NEW YORKERS SAFER?**

Civil Management has only been in effect for one year, and as a result, it is difficult to gauge its impact. In addition, Civil Management was only intended to apply to a small number of offenders, and the system, just like any system, is not foolproof. It is also impossible to predict with 100% accuracy who might commit a new sexual crime.

Despite these limitations, it appears that Civil Management may already be making a difference and helping to protect communities from some of the most dangerous sex offenders. During the first year alone, 36 dangerous sex offenders have been ordered civilly confined. If it were not for Civil Management, these offenders would have been released into the community.

SOMTA also furthers community safety in another way: by setting new determinate sentences for many sex crimes. Under these sentences offenders will not be eligible for discretionary release on parole. In addition, many will be subject to much longer terms of post-release supervision, as much as 25 years.

## **THE DEPARTMENT OF CORRECTIONAL SERVICES' NEW TREATMENT PROGRAM**

Not only did the Sex Offender Management and Treatment Act establish Civil Management, but it also required the Department of Correctional Services to provide enhanced treatment for incarcerated sex offenders. DOCS has moved aggressively to build a program utilizing empirically based treatment practices. For example, DOCS has developed different treatment regimes for low-risk and medium- to high-risk offenders and is using actuarial tools and clinical assessments to determine the level of treatment based on an individual's risk of reoffending. Additionally, treatment modalities have been developed for inmates with special needs, higher risk individuals are being placed in residential treatment programs, and offenders are receiving enhanced discharge planning.

DOCS's new treatment approach is an example of the efforts of all State agencies, including the Office of Mental Health, the Department of Correctional Services and the Division of Parole to create an integrated state-of-the-art approach to sex offender treatment and management.

## **THE OFFICE OF SEX OFFENDER MANAGEMENT**

The Office of Sex Offender Management (OSOM) was created within the Division of Criminal Justice Services by Executive Law 837-r, and given a broad mission, including advising the Governor and legislature on sex offender issues, coordinating interagency initiatives, establishing standards concerning treatment, supervision and re-entry of offenders, conducting State-wide public awareness and prevention campaigns, and conducting training for law enforcement and other professionals who deal with sex offenders. OSOM has played an important role in the implementation of Civil Management.

In addition to helping to implement Civil Management, OSOM has been training law enforcement, judges and attorneys concerning the law. For example, OSOM trained judges from across the State on the new law during the summer of 2007. And, over the last few months, OSOM has provided numerous trainings by experts from across the country that have reached hundreds of parole officers (including almost all of the officers assigned to supervise SIST cases), probation officers, Assistant Attorneys General, and personnel from various agencies. These trainings have focused not only on Civil Management, but important related topics such as the most effective strategies to supervise sex offenders who are on probation or parole. Finally, in an effort to ensure that the Civil Management system is the best possible, OSOM set up a quality control program and has hired experts to independently evaluate key parts of the process.

## **CONCLUSION**

The Sex Offender Management and Treatment Act was passed one year ago to provide a new mechanism to protect New Yorkers from dangerous sex offenders. During this past year great strides have been made toward implementing this goal. Currently, the Civil Management system is functioning across the State and offenders are being civilly confined, the Department of Correctional Services is instituting a new treatment program for incarcerated offenders, and the Office of Sex Offender Management is beginning to fulfill its broad mission. Although it may be too early to predict what long-term impact SOMTA may have, one thing is clear: if it were not for the Sex Offender Management and Treatment Act dangerous sex offenders would be released into the community with little or no oversight. Because of SOMTA these individuals can now be confined or placed on intensive supervision, thus enhancing community safety.

If you have questions regarding this report, or wish further information concerning Civil Management, please call the Division of Criminal Justice Services' Public Information Office at (518) 457 – 8415



# Sex Offender Management and Treatment Act

